

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

To:

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NOTIFICATION OF TRANSMITTAL OF
THE INTERNATIONAL PRELIMINARY
EXAMINATION REPORT
(PCT Rule 71.1)

MAR 11 2004

Date of mailing
(day/month/year)

03.03.2004

Applicant's or agent's file reference
BA9298PCT

☐ TO BE REVIEWED
BY ATTORNEY

IMPORTANT NOTIFICATION

International application No.
PCT/US 03/08186

International filing date (day/month/year)
18.03.2003

Priority date (day/month/year)
19.03.2002

Applicant
E.I. DU PONT DE NEMOURS AND COMPANY et al.

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary examination report and its annexes, if any, established on the international application.
2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.
3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.
4. **REMINDER**

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices) (Article 39(1)) (see also the reminder sent by the International Bureau with Form PCT/IB/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

The applicant's attention is drawn to Article 33(5), which provides that the criteria of novelty, inventive step and industrial applicability described in Article 33(2) to (4) merely serve the purposes of international preliminary examination and that "any Contracting State may apply additional or different criteria for the purposes of deciding whether, in that State, the claimed inventions is patentable or not" (see also Article 27(5)). Such additional criteria may relate, for example, to exemptions from patentability, requirements for enabling disclosure, clarity and support for the claims.

EEL NOTED

19 Sept 2004

Name and mailing address of the international preliminary examining authority:



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PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT (PCT Article 36 and Rule 70)

| | | | |
|--|---|---|---|
| Applicant's or agent's file reference BA9298PCT | FOR FURTHER ACTION | | See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416) |
| International application No. PCT/US 03/08186 | International filing date (<i>day/month/year</i>) 18.03.2003 | Priority date (<i>day/month/year</i>) 19.03.2002 | |
| International Patent Classification (IPC) or both national classification and IPC A01N43/40 | | | |
| Applicant E.I. DU PONT DE NEMOURS AND COMPANY et al. | | | |

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.



2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

| | |
|---|--|
| Date of submission of the demand 16.10.2003 | Date of completion of this report 03.03.2004 |
| Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465 | Authorized Officer Cortés, J Telephone No. +49 89 2399-8206  |

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. PCT/US 03/08186

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-41 as originally filed

Claims, Numbers

1-14 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

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EXAMINATION REPORT**

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**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1. Statement

| | | |
|-------------------------------|-------------|------|
| Novelty (N) | Yes: Claims | 1-14 |
| | No: Claims | |
| Inventive step (IS) | Yes: Claims | |
| | No: Claims | 1-14 |
| Industrial applicability (IA) | Yes: Claims | 1-14 |
| | No: Claims | |

2. Citations and explanations

see separate sheet

Re Item V

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Reference is made to the following documents:

D1: WO-A-9931951

D2: WO-A-0111966

D3: JP-A-07025853

D4: JP-A-07010841

Novelty (Article 33(2) PCT)

The claimed compositions differ from the compositions in D1 in the component (a) (compound of formula I) and from the compositions in D2 in the specific groups of compounds listed for the component (b); the present invention is a new selection of D2. D3 and D4 do not disclose fungicide compositions.

The present claim set is therefore novel in view of D1 to D4.

Inventive Step (Article 33(3) PCT)

D1 discloses synergistic fungicide compositions and can be regarded as the closest prior art.

The problem of the invention was the provision of new synergistic fungicide compositions.

The present compositions differ from the compositions in D1 in the component (a). The present component (a) has a 2-pyridinyl-methyl moiety instead of a biphenyl group.

D2 discloses fungicides which are encompassed by the present formula I as well as the

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EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/US03/08186

use of these compounds in compositions containing further active ingredients, such as other fungicides.

D1 and D2 represent the closest prior art documents. From D1 a skilled person knew that certain 3-pyridinecarboxamide derivatives have synergistic effects in fungicide compositions and from D2 that 2-pyrimidylmethyl-3-pyridinecarboxamides are useful fungicides which can be used in combination with other fungicides. Faced with the problem of the invention, he would have assumed that the compounds of D2 can also be used as components in synergistic fungicid compositions and therefore he would combined D1 with D2 and arrived at the present invention.

Therefore, the present invention lacks an inventive step in view of D1 and D2.